THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.18203 of 2006

Date : 8-11-2006

Between:

M.Jagannadha Rao .. Petitioner

And

Government of Andhra Pradesh
represented by its Secretary,
Department of Panchayat Raj &
Rural Development, Hyderabad
and others .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.18203 of 2006

ORDER:

1. This Court ordered notice before admission on 4-9-2006 and the learned Assistant Government Pleader for Panchayat Raj had taken notice for respondents 1 to 3 and Sri Narayana Rao who entered appearance on behalf of 5th respondent requested time to file counter affidavit.

2. The 5th respondent filed counter affidavit.

3. Sri M.Jagannath Rao, the writ petitioner filed the present Writ Petition praying for a writ of mandamus declaring the inaction of the respondents in not initiating action for disqualification of the 5th respondent for having more than three children born after the year 2000 being illegal, arbitrary, violative of the provisions of A.P. Panchayat Raj Act 1994 and unconstitutional and consequently to direct the respondents to forthwith disqualify the 5th respondent from being the Sarpanch of Satyavaram Gram Panchayat in Payakaraopet Mandal of Visakhapatnam District and to pass such other suitable orders.

4. The learned Counsel for the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and would submit that in the facts and circumstances of the case, the total inaction on the part of respondents 1 to 4 in further proceeding with the action to be taken in relation to disqualification cannot be justified. The learned Assistant Government Pleader for Panchayat Raj however would maintain that the procedure to be followed under Section 22 of A.P. Panchayat Raj Act 1994 had not been followed.

5. Sri Narayana Rao, the learned Counsel representing the 5th respondent had taken this Court through the averments made in the counter affidavit and would submit that the writ petitioner has no locus standi to file the present writ petition at all since he is neither an affected

party nor an aggrieved party. The learned Counsel also would submit that already one Mogasala Appa Rao filed Election O.P.No.1162/2006 on the file of the Principal District Judge, Visakhapatnam. The Counsel also would submit that one Srinivasa Rao already filed Election O.P.No.15/2006 on the file of Principal District Munsif, Yelamanchili. When that being so, it would not be just and proper to grant the present relief in relation to the initiation of action under Section 22 of A.P. Panchayat Raj Act, 1994 (hereinafter in short referred to as "Act" for the purpose of convenience) for the reason that these proceedings may result in passing of conflicting orders on judicial side and also by the concerned authorities.

6. Heard the Counsel.

7. The writ petitioner M.Jagannadha Rao had stated in the affidavit filed in support of the Writ Petition that he is a permanent resident of Satyavaram village in Payakaraopet Mandal of Visakhapatnam District and a voter of the said Gram Panchayat and the 5th respondent also is a voter of the said Gram Panchayat and had contested the elections recently on 2-8-2006 and however resorting to various illegal electoral practices and he had succeeded in being elected to the office of Sarpanch. It is also stated that at the time of nomination, the villagers opposed the nomination of the 5th respondent and informed the Electoral Officer that he had not qualified to become a Sarpanch the reason being that he has more than three children which is prohibited present provisions of the Act. However, the 5th respondent exerted influence through Ministers of the ruling party and his nomination was not rejected. It is also stated that under the Act a person having more than two children shall be disqualified for election or for continuing as a Member of the Gram Panchayat and the exception is the birth of additional child if it is within one year from the date of commencement of the Act and the other exception is that even if a third child is born after the

commencement of the Act if the number of children does not increase to three. It is also stated that the 5th respondent is having three children viz., Raja, Pragna and Shyam and the youngest son Shyam is aged two years and hence it is stated that the 5th respondent is not eligible to contest either as Member or as Sarpanch and hence the 5th respondent cannot continue in the said office.

8. In the counter affidavit filed by the 5th respondent specific stand is taken that the petitioner has no locus standi to file the present Writ Petition since the petitioner is neither an affected party nor an aggrieved party and further it is stated that the petitioner is none other than the brother-in-law of one V.Srinivas Rao who contested against him unsuccessfully. It is also stated that the said Srinivasa Rao filed Election O.P.No.15/2006 on the file of Principal District Munsif-cum-Election Tribunal, Yelamanchili under Section 232 of the Act against the 5th respondent on the ground of disqualification for election to the office of Sarpanch of Gram Panchayat under Section 19(3) of the Act. It is also stated that in the said Election O.P. the Tribunal was pleased to dismiss an application which was filed for interim order and the matter stood posted to 10-10-2006 for his appearance. It is also stated that Srinivas Rao also had set up one Mogasala Appa Rao and filed E.O.P.No.1162/2006 on the file of Principal District Judge, Visakhapatnam for the self-same relief. Specific stand was taken that Section 22 of the Act is not applicable to the facts of the case and further it was stated that the material papers filed along with the Writ Petition are not authenticated documents but just created documents. Further specific stand is taken that the ground raised by the writ petitioner that the 5th respondent is having three children is an incorrect ground and hence the same has been specifically denied. Further it was stated that when the successful candidate already had filed Election Petition under Section 233 of the Act and the same is pending adjudication, it would be

improper to pursue such remedy under Section 22 of the Act. Several other allegations also were made in the counter affidavit filed by the 5th respondent.

9. In the light of the material placed before this Court, it is clear that already Srinivasa Rao and Appa Rao filed E.O.P.No.15/2006 on the file of Principal District Munsif-cum-Election Tribunal, Yelamanchili and E.O.P.No.1162/2006 on the file of Principal District Judge, Visakhapatnam respectively questioning the self-same election and the same are pending disposal. Section 22 of the Act dealing with **Constitution, Administration and Control of Gram Panchayats** falls under Chapter-I and the said Section 22 of the Act reads as hereunder :

Authority to decide questions of disqualifications of members :-

(1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which the office of the gram panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.

Section 233 of the Act falls under Chapter III dealing with **Miscellaneous Election matters, Vacation of seats and Offices** and the said Section 233 of the Act dealing with **Election Petitions** reads as hereunder :

> "No Election held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf."

It is true that even in Section 22(1) it is specified "…*within a period of two months from the date on which intimation is given or doubt is entertained, as the case may be apply to the District Court having jurisdiction over the area in which the office of Gram Panchayat is situated for decision"*.

Section 22-A of the Act dealing with **Bar of jurisdiction** reads as hereunder :

> "No order passed or proceedings taken under the provisions of this Act, shall be called in question in any Court, in any suit, or application; and no injunction shall be granted by any Court except District Court in respect of any action taken or about to be taken in pursuance of any power conferred by or under this Act."

Section 2 of the Act deals with **Definitions** and the expression "Executive Authority" is defined under Section 2(12) of the Act to the effect that :

> "In this Act, unless the context otherwise requires, Executive Authority means the Panchayat Secretary appointed to each Gram Panchayat."

Section 2(28-A) of the Act which was inserted by Act 22/2002 defines "Panchayat Secretary" as :

> "In this Act, unless the context otherwise requires, Panchayat Secretary means the "Panchayat Secretary" appointed under Section 30".

Section 30 of the Act dealing with **Appointment of Executive Officers for certain Gram Panchayats** reads as hereunder :

> (1) A whole time or a part-time Executive Authority shall be appointed by the Commissioner for any gram panchayat or for any group of contiguous gram panchayats which may be notified

by him in this behalf:

Provided that before notifying a group of gram panchayats under this sub-section, the Commissioner shall obtain the approval of the Government.

(2) In the case of every gram panchayat not so notified and also in the case of any gram panchayat so notified if there is no Executive Authority in charge, the Sarpanch of the gram panchayat shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the Executive Authority.

(3) Save as otherwise prescribed, no Executive Authority appointed under sub-section (1) shall undertake any work unconnected with his office without the sanction of the Government.

(4) The Executive Authority shall be subordinate to the gram panchayat.

10. On a careful scrutiny of Sections 22 and 233 of the Act, this Court is of the considered opinion that these provisions virtually operate in different fields and the scope and ambit also appear to be different. It cannot be said that the remedy by way of Election Petition always can be equated with the remedy under Section 22 of the Act. It is needless to say that the grounds which were raised and to be adjudicated on judicial side in Election Petition may be different grounds and the grounds which may be available in relation to disqualifications to be adjudged under Section 22 of the Act may be of limited nature which may have to be decided by the concerned authorities in accordance with the procedure under Section 22 of the Act. Be that as it may, the remedies available in relation to disqualification under Section 22 of the Act by authorities and by way of Election Petition under Section 233 of the Act, these are simultaneous remedies and merely because a party invokes the jurisdiction of Election Tribunal by filing Election Petition, unless there is specific prohibition, it cannot be said that such party cannot pursue the remedy under Section 22 of the Act. If such interpretation to be adopted it would amount to doing violence to the spirit of the Legislation in

introducing such remedies by indicating separate specific provisions viz., Section 22 of the Act and Section 233 of the Act. Hence, these two provisions and the exercise of powers in relation to the respective aspects, operate definitely in different fields at least upto some extent and may be that certain grounds may be overlapping.

11. It appears that the present writ petitioner had not filed the Election O.Ps. specified supra. The ground of disqualification is being raised in the present Writ Petition, may be for the reason that the writ petitioner had not invoked the jurisdiction of any Election Tribunal whatsoever in relation to the election in question. Apart from this aspect of the matter, the writ petitioner as a voter of Gram Panchayat is approaching this Court complaining inaction on the part of respondents 1 to 4 in further proceeding with the action to be take in relation to disqualification under Section 19(3) of the Act which had been complained of. Hence, this Court is of the considered opinion that the stand taken by the Counsel representing the 5th respondent on the ground that this is only a vexatious remedy thought of at the behest of unsuccessful candidate cannot be accepted. However, it is brought to the notice of this Court that the procedure under Section 22 of the Act as such had not been followed. When that being so, the question of further proceeding with the action to be taken would not arise unless the procedure prescribed as specified under Section 22 of the Act is followed by the writ petitioner.

12. In view of the same, the Writ Petitioner is given liberty to follow the procedure as contemplated by Section 22 of the Act and however this Court records hope that the concerned authorities would take appropriate action in accordance with law depending upon the facts and circumstances. Except making this observation, nothing further can be done in the light of the facts and circumstances. Accordingly the Writ Petition is disposed of giving the aforesaid liberty to the writ petitioner. No order as to costs.

Justice P.S. Narayana

Date : 8-11-2006

L.R. copy to be marked : YES / NO

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